

1 BEFORE THE HON. ROSEMARIE AQUILINA, CIRCUIT JUDGE
2 Ingham County, Michigan - Thursday, July 18, 2013
3

4 APPEARANCES:

5 For Plaintiffs Retirement Systems:
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T A B L E O F C O N T E N T S

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5 WITNESSES:

6 None

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11 EXHIBITS:

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| <p>1 Ingham County, Michigan 2 Thursday, July 18, 2013 - At 4:15 p.m. 3 MR. KING: Good afternoon. 4 THE COURT: Good afternoon. We have everybody 5 here? 6 MR. KING: They are. 7 THE COURT: All right. This is Docket 8 13-768-CZ, the General Retirement System of the City of 9 Detroit and the Police and Fire Retirement System of the 10 City of Detroit versus Kevin D. Orr, in his official 11 capacity as the Emergency Manager of the City of Detroit, 12 and Richard Snyder, in his official capacity as the 13 Governor of the State of Michigan. 14 Counsel, your appearances for the record. 15 MR. KING: Good afternoon, your Honor. Ron 16 King with Clark Hill on behalf of the Plaintiffs, the 17 General Retirement System of the City of Detroit and the 18 Police and Fire Retirement System of the City of Detroit. 19 THE COURT: Welcome. 20 MR. KING: Thank you. 21 MR. QUASARANO: Your Honor, if I may, Thomas 22 Quasarano, Assistant Attorney General, that will be 23 appearing in this case on behalf of the Defendant. I 24 believe the Defendant was served yesterday. We have not 25 received a request for representation, but I'm very</p> | 4 | <p>1 Counsel? 2 MR. KING: Your Honor, Ron King again on behalf 3 of the Plaintiffs, the Detroit Retirement Systems. We 4 might need to beg the Court's indulgence. While we 5 appreciate that you have seen us on very short notice, 6 we've been advised that the City has filed, and we're 7 pulling it up on the electronic filing system, so we 8 might need a few minutes here to figure out our very next 9 step. 10 THE COURT: Okay. 11 MR. KING: Because the effect of a bankruptcy 12 filing, if, in fact, that's -- we're trying to conform 13 that. We think, in fact, it has been filed here within 14 the last half hour. So we probably need about a 15 ten-minute recess here, if the Court would indulge us. I 16 know you have another matter. 17 THE COURT: Do we want to make a phone call? 18 MR. KING: Yeah. We can, but we're pretty -- 19 THE COURT: Well, here's the thing: If they 20 haven't filed, we need to hurry up and proceed. If they 21 have filed -- 22 MR. KING: We're pretty confident that they 23 filed. 24 Right? 25 I mean, we're pulling it up. Yeah. It's been</p> | 6 |
| <p>1 likely going to be asked to represent the Governor. 2 THE COURT: Sir? 3 MR. WERTHEIMER: Excuse me, your Honor, 4 William Wertheimer. I apologize for my dress. 5 THE COURT: No problem. I know it's last 6 minute. I don't care how people are dressed. It's more 7 important that you are here. 8 MR. WERTHEIMER: Thank you, your Honor. I was 9 here to file my reply brief today for the Monday hearing. 10 I am now here knowing that this motion has been filed, 11 and I wanted to enter my appearance. 12 THE COURT: All right. You may have a seat. 13 There is plenty of room for all. 14 MR. WERTHEIMER: Thank you. 15 MR. CANZANO: Your Honor, excuse me, John 16 Canzano, Plaintiffs' attorney in the Webster case. Same 17 as Mr. Wertheimer, we just found out about this. I'm 18 here. My reply brief is being filed. I have a judge's 19 copy here somewhere. 20 THE COURT: All right. Have a seat. 21 MR. KING: Your Honor -- 22 THE COURT: Anybody else? 23 MR. PATTWELL: Your Honor, Michael Pattwell 24 from Clark Hill on behalf of Plaintiffs. 25 THE COURT: Thank you.</p> | | <p>1 confirmed. So I'm not sure where that leaves us with 2 this proceeding because it's going to be pretty hard to 3 undue. It's been done. 4 MR. WERTHEIMER: There is no automatic stay in 5 this. 6 MR. KING: Yeah. What we're here for -- the 7 really -- 8 What counsel is saying is there is no automatic 9 stay with respect to this proceeding. So in our 10 judgment, this matter will proceed. What you have before 11 you, however, is a motion for temporary restraining order 12 to enjoin certain conduct that's already occurred. So 13 I'm not sure that we really have a lot of business in 14 front of the Court at this moment, but I would like to 15 just confer for about ten minutes on that issue because 16 we will proceed in the case. And if we're here and you 17 want to take the time to set some sort of expedited 18 briefing schedule, we could do that also. 19 It's quite likely that you, your Honor, will be 20 able to make a ruling on the merits of this case in 21 advance of whatever occurs in the context of a Chapter 9 22 filing. 23 THE COURT: I plan on making a ruling on 24 Monday. I could make a ruling tomorrow, if push came to 25 shove, but Monday would probably be soon enough. I am Entered 10/17/13 14:22:01 Page 3 of 7</p> | |

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| <p>1 confident that the bankruptcy court won't act as quickly 2 as I will.</p> <p>3 MR. KING: Yeah. I'm not sure, but we'll see. 4 I mean, there might -- but, nevertheless, so we should -- 5 If you're prepared to rule on the merits on 6 Monday, again I'm not sure what -- if there is much 7 business for us left to do before the Court today.</p> <p>8 THE COURT: Unless some kind of -- I don't 9 really have any authority over them, so.</p> <p>10 MR. KING: Right.</p> <p>11 THE COURT: I don't think anything -- 12 Counsel?</p> <p>13 MR. WERTHEIMER: Your Honor, the motion that's 14 up for Monday, our motion at least that's up for Monday, 15 is a request for a preliminary injunction to enjoin the 16 Governor. We have no evidence the Governor has 17 authorized any bankruptcy, and we would not only want to 18 go forward on Monday but ask that the motion for 19 preliminary injunction be moved up to now, hopefully, to 20 tomorrow morning if the Court will not hear it now. But 21 I don't think there is any reason why the Court cannot 22 hear our motion for preliminary injunction.</p> <p>23 I'm not talking about in terms of the Court's 24 preparedness but in terms of the apparent filing. They 25 may have filed. But nobody -- I asked the Governor's</p> | <p>1 we should find out from the Office of the Attorney 2 General whether the Governor has authorized a bankruptcy 3 that has done the act that we were attempting to enjoin 4 and that they knew we were attempting to enjoin and that 5 they've known for the last two weeks and that they're 6 filing briefs on saying that it's not ripe. The 7 attorneys for the Government have represented to this 8 Court that our motion is not ripe.</p> <p>9 THE COURT: I just received a note from my law 10 clerk that says the bankruptcy was filed at 4:06..</p> <p>11 MR. KING: Right. Your Honor, so what we'd 12 like to do here is amend our emergency motion for 13 temporary restraining order and get it and request from 14 this Court an order enjoining the Governor and the 15 Emergency Manager from taking any further action in the 16 bankruptcy proceeding, and we'll modify our order to that 17 effect.</p> <p>18 MR. WERTHEIMER: I would join that as to the 19 Governor. We have not sued the Detroit Emergency 20 Manager, but I would orally join in that motion as to the 21 Governor and the Secretary of the Treasury.</p> <p>22 MR. CANZANO: I would say the same in our case. 23 We're not joining their motion but we're making a motion 24 in our case that would be the same as theirs only against 25 the Governor.</p> |
| <p style="text-align: center;">8</p> <p>1 Office before we came in here -- er, the Attorney General 2 whether they could make any representations to me that 3 would obviate the need for me going forward, and they 4 could not.</p> <p>5 So we've got a written, fully briefed request/ 6 motion for preliminary injunction. The Attorney 7 General's Office has briefed it. Time is obviously of 8 the essence. I would suggest that the Court hear our 9 motion to preliminarily enjoin the Governor authorizing a 10 bankruptcy now.</p> <p>11 MR. CANZANO: Your Honor, I would make 12 essentially the same request except that our motion, 13 although it seeks preliminary injunctive relief in the 14 alternative, it primarily seeks a final declaratory 15 judgment that what has just happened, apparently, is 16 unconstitutional, and that is ready for a final decision 17 we were saying on Monday. We have a reply brief that has 18 just been filed, and we would -- we could -- this Court 19 could issue that order immediately, and I don't know what 20 the consequences for the bankruptcy court would be, 21 necessarily, but I think it would -- it might make a 22 difference.</p> <p>23 MR. WERTHEIMER: I'm sorry, and I think that at 24 a minimum, your Honor, I think we should -- I think the 25 Court should decide the preliminary injunction now, but 13-53846-tjt Doc 1221-7 Filed 10/17/13</p> | <p style="text-align: center;">10</p> <p>1 THE COURT: Granted, as to all of your 2 requests.</p> <p>3 How soon are you going to present me with an 4 order?</p> <p>5 MR. KING: Right now.</p> <p>6 THE COURT: All right.</p> <p>7 MR. KING: We just need to mark up the order 8 that we have for the Court.</p> <p>9 THE COURT: Absolutely.</p> <p>10 MR. QUASARANO: Your Honor, if I may, we would 11 ask that the Court stays enforcement of the order, and 12 your ruling on that would be appreciated at this time.</p> <p>13 THE COURT: Denied.</p> <p>14 MR. QUASARANO: Thank you. We'll present an 15 order as soon as possible.</p> <p>16 THE COURT: Thank you.</p> <p>17 MR. QUASARANO: Thank you, Judge.</p> <p>18 MR. WERTHEIMER: Your Honor, we will need a few 19 minutes to prepare a written order, but if we can --</p> <p>20 THE COURT: Well, sir, would you like to copy 21 that and modify what they're doing? My law clerk will be 22 happy to help you.</p> <p>23 MR. WERTHEIMER: Thank you, your Honor.</p> <p>24 THE COURT: As to your stay, you'll be getting 25 that to me in --</p> |

1 MR. QUASARANO: Maybe I can just make a call
 2 and get an order over to you right yet today.

3 THE COURT: Sure. You can even handwrite it.
 4 I don't care how we do it. You can run it over here, fax
 5 it over here; whatever gets you the job done. Time is of
 6 the essence.

7 MR. QUASARANO: I appreciate that.

8 MR. KING: (Approaching the bench.)

9 Your Honor, Ron King again on behalf of the
 10 Plaintiffs. If we could go back on the record.

11 THE COURT: Excuse me.

12 MR. KING: We'd like to set the sequence of
 13 events in terms of how things have transpired in the last
 14 hour, if you will. Just for the record, our motion for
 15 emergency temporary restraining order was filed at
 16 3:37 p.m.; that is, today, July 18th. We promptly, well
 17 in advance of 4 o'clock and probably within -- well,
 18 actually, we had delivered prior to the filing time at
 19 3:37 judge's copies to chambers for your review.

20 Then we waited for the Attorney General, who
 21 doesn't feel compelled to make an appearance here in this
 22 case because he hasn't actually been officially retained
 23 yet, but, nevertheless, as a courtesy we waited for him
 24 to appear, which he came upstairs sometime around 4:10.
 25 We understand the bankruptcy filing was at 4:05?

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1 supposed to take place at 4 o'clock, and I understood
 2 this was a very important issue, and we obviously have a
 3 hearing scheduled, another hearing scheduled, at
 4 9 o'clock on Monday.

5 So I advised my law clerk that we had a
 6 4 o'clock hearing that wasn't going to take very long,
 7 and whenever you all got here and that we would wait for
 8 all of the attorneys, we would then have a hearing and to
 9 let me know when everybody was in place and then I would
 10 come out.

11 So that's exactly what happened. She let me
 12 know everybody was here, gave me the paperwork to look
 13 over, and, of course, I did just that. And we got out of
 14 here as quickly as we could, obviously not in time
 15 because 4:06 occurred and they did what they were going
 16 to do, which I know you all raised here.

17 I did have an opportunity to -- with review of
 18 what was filed, and you're asking me what I would have
 19 done, and it was my intention, after reviewing what you
 20 had filed, in addition to other research that my capable
 21 externs from Cooley and from Michigan State, as well as
 22 my very capable law clerk pulled for me, I reviewed
 23 constitutional provisions, I reviewed legislative intent,
 24 I reviewed what you all provided me, I reviewed a lot of
 25 information in the last few hours, and it was my

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1 THE COURT: 4:06.

2 MR. KING: 4:06. The Court took the bench at
 3 approximately 4:20. And to the extent your Honor has had
 4 an opportunity to read the papers and was inclined to
 5 make a ruling, if you'd be willing to put that on the
 6 record, then in the -- when we do seek dismissal of the
 7 bankruptcy proceeding, we'll have some clear record of
 8 the sequence of events here.

9 MR. WERTHEIMER: Just to add, in terms of the
 10 sequence of events, I did advise by telephone
 11 Mr. Quasarano of the fact that I would be in court and
 12 that it was my understanding that Clark Hill was going to
 13 be in court seeking a temporary restraining order. I
 14 talked to him by phone before 4 this afternoon, sometime
 15 between 3:30 and 4.

16 MR. QUASARANO: And I could confirm that
 17 Mr. Wertheimer gave me the professional courtesy of
 18 letting me know that there was a hearing being planned.
 19 I had no -- we have no personal knowledge in our division
 20 of a bankruptcy being filed any certain time or date, so
 21 there is nothing we could provide in terms of a response
 22 that there is going to be a bankruptcy filed. So we
 23 learned it as everyone else learned.

24 THE COURT: All right. And obviously I heard
 25 this was happening. I had another hearing that was
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1 Intention to grant you your request completely.

2 MR. KING: Thank you, your Honor. Appreciate
 3 your clarifying the record.

4 MR. WERTHEIMER: Thank you, your Honor.
 5 Your Honor, we have a proposed order.

6 THE COURT: You may approach. Thank you.
 7 MR. WERTHEIMER: Thank you. It is handwritten.
 8 (Approaching the bench.)

9 THE COURT: No problem.

10 MR. WERTHEIMER: And for caption, it just says,
 11 at this point, Flowers Caption.

12 THE COURT: Okay.

13 MR. WERTHEIMER: I had some help in drafting
 14 too if you can't read the --

15 THE COURT: We'll make it work.

16 MR. WERTHEIMER: Okay. Thank you, Judge.

17 MR. KING: We may be back tomorrow, your Honor.

18 MR. WERTHEIMER: We may be back too,
 19 your Honor. And if we are, I will be in a suit.

20 THE COURT: It's okay. As long as your body is
 21 covered, I don't care what's it's covered with.

22 MR. KING: I think with respect to the present
 23 motion before you, we have an order in place and
 24 appreciate you making the accommodation and time for us
 25 today. Thank you.

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1 THE COURT: No problem.
2 Now, if you're back tomorrow, what is it going
3 to be for?
4 MR. KING: We might file a mandamus action
5 requiring the EM to withdraw the Chapter 9 filing.
6 THE COURT: Will this require time on the
7 record?
8 MR. KING: Yes.
9 THE COURT: Okay. My time restriction is that
10 I have my morning free until about 1:30. Can you get it
11 here before 1:30?
12 MR. PATTWELL: Yes.
13 MR. KING: Absolutely.
14 THE COURT: I'll make myself available all
15 morning until 1:30.
16 MR. KING: Thank you, your Honor.
17 THE COURT: Okay.
18 MR. CANZANO: May I approach, your Honor? I
19 have an order drafted also.
20 THE COURT: You may.
21 MR. CANZANO: (Approaching the bench.)
22 THE COURT: Okay. We'll make you copies, and
23 this is our copy.
24 Anything else for the record?
25 MR. KING: No, your Honor. Thank you.

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1 MR. WERTHEIMER: No, your Honor. Thank you.
2 THE COURT: That's all for the record. Thank
3 you.
4 (At 4:38 p.m., the matter is
5 concluded.)
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1 STATE OF MICHIGAN)
2) SS.
3 COUNTY OF INGHAM)

4 CERTIFICATE OF REPORTER

5

6 I, Melinda I. Dexter, Certified Shorthand
7 Reporter, do hereby certify that the foregoing
8 17 pages comprise an accurate, true, and complete
9 transcript of the proceedings and testimony taken in the
10 case of The General Retirement System of the City of
11 Detroit, et al., versus Kevyn D. Orr, et al., Case
12 No. 13-768-CZ, and Gracie Webster, et al., versus the
13 State of Michigan, et al., Case No. 13-734-CZ, and
14 Robbie Flowers, et al., versus Rick Snyder, et al., Case
15 No. 13-729-CZ, on Thursday, July 18, 2013.

16 I further certify that this transcript of the
17 record of the proceedings and testimony truly and
18 correctly reflects the exhibits, if any, offered by the
19 respective parties. WITNESS my hand this the eighteenth
20 day of July, 2013.

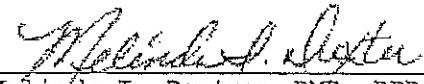
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